IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY THE THIRTY FIRST DAY OF JANUARY
TWO THOUSAND AND SEVEN

: PRESENT:

THE HON'BLE **SRI G.S. SINGHVI,** THE CHIEF JUSTICE

AND

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION NO: 1602 of 2007

Between:

1 Mohammed Abdul Khadeer S/o. Mohd.Abdul Lateef.
2 Mohammadi Begum W/o.Mohd.Abdul Lateef
(Both R/o. 8-2-403/A/1/A/, Road No.4, Banjara Hills, Hyderabad)

..... Petitioners

AND

1 Municipal Corporation of Hyderabad, rep.by its Commissioner, Tank Bund, Hyderabad
2 Assistant City Planner, Circle No. V, .Municipal Corporation of Hyderabad, at Hyderabad.
3 Badam Balakrishna S/o.B.Ramaswamy R/o.8-2-402, Road No.4, Banjara Hills, Hyderabad

.....Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of mandamus or any other appropriate writ declaring that the action of the first respondent contained in the Final Notice and letter No.403/A/ACP/C5/2007 dated 23.1.2007 and the notice issued under section 452 of the Act dated 20.12.2006 directing demolition of the residential house of the petitioners bearing premises No.8-2-403/A/1/A Road No.4, Banjara Hills, Hyderabad is arbitrary, illegal, and vitiated by non-application of mind and consequently direct the respondents 1 and 2 to forbear from demolishing any pat of the said house property of the petitioners without giving reasonable and adequate opportunity to the petitioners to respond to the action initiated by the first respondent under the provisions of the Hyderabad Municipal Corporation Act,1955 and grant such other relief as it deems fit in the circumstances of the case.

The petition coming on for hearing, upon perusing the petition and the affidavit filed herein and the order of the High Court dated: 29-01-2007 made herein and upon hearing the arguments of Sri Vedula Venkataramana, Advocate for the Petitioners, and of Smt. Jyothikiran, S.C. for MCH for the respondents 1 and 2, the Court made the following:

ORDER:

“Shri V. Venkataramana for the petitioners.

Shri V. Venkataramana, learned counsel for the petitioners assailed notice dated: 20-12-2006 issued by Commissioner, Municipal Corporation of Hyderabad mainly on the ground that the same is vague. He submitted that even though his clients had, vide their representation dated: 27-12-2006, made a request for local inspection, respondent No.

2. Assistant City Planner, Circle V, Municipal Corporation of Hyderabad did not order for local inspection and issued notice dated: 23-01-2007 under Section 636 of Hyderabad Municipal Corporation Act, 1955 (for short, 'the Act') necessitating filing of the Writ Petition.

From the record of the case, we find that the petitioners had challenged the proceedings initiated by the competent authority of the Municipal Corporation of Hyderabad on 17-06-2002 for demolition of the illegal construction made by them by issuing notice under Section 452 of the Act. At that stage, they succeeded in persuading the trial Court to pass an order of injunction against demolition and by abusing the order of injunction; they continued illegal construction till 2003. To the misfortune of the petitioner, the civil Court dismissed the suit on 23-01-2006 and the judgment of the trial court has become final, because no appeal is shown to have been filed against the same.

Although the concerned authorities of the Corporation should have, immediately after dismissal of the suit, taken steps for demolition of the illegal construction made in violation of the sanctioned plan, they slept over the matter till 20-12-2006 when notice under Section 452 of the Act was issued. The petitioners have filed another suit for injunction, which stands registered as O.S. No. 6511 of 2006, but they failed to persuade VI Junior Civil Judge, City Civil Court, Hyderabad to pass an order of injunction and this is the reason why they have invoked the jurisdiction of the High Court under Article 226 of the Constitution in the guise of challenging final notice dated: 23-01-2007 issued under Section 636 of the Act.

In our opinion, the petitioner, who appear to have taken law into their hands and raised illegal constructions in violation of the sanctioned plan are not entitled to be heard under Article 226 of the Constitution of India, more so, because the suit filed by them is pending in the civil Court. We would have dismissed the Writ Petition today itself with exemplary costs, but keeping in view the fact that the officers and authorities of the Municipal Corporation appear to be hand in glove with the petitioners which facilitated continuance of illegal construction by them and who failed to take action for almost one year even after the dismissal of the suit, we deem it proper to adjourn the matter to 05-02-2007 with the direction to Smt. G. Jyothi Kiran, learned counsel appearing for respondent Nos. 1 and 2 to file a detailed affidavit of Commissioner of Municipal Corporation of Hyderabad indicating therein as to why the officers of the Corporation did not take action for demolition of the illegal construction raised by the petitioners despite the fact that they were fully cognizant of the dismissal of the suit filed by the petitioners. If satisfactory explanation is not forthcoming, the Court may have to draw an inference that the authorities and the officers of the Corporation have, with malice animus, encouraged illegal constructions

in the twin cities of Hyderabad and Secunderabad".

ASSISTANT REGISTRAR

// TRUE COPY //

for ASSISTANT REGISTRAR

To

1. The Commissioner, Municipal Corporation of Hyderabad, Tank Bund, Hyderabad
2. The Assistant City Planner, Circle No.V, .Municipal Corporation of Hyderabad, at Hyderabad
3. Badam Balakrishna S/o.B.Ramaswamy, /o.8-2-402, Road No.4, Banjara Hills, Hyderabad (1 to 3 by RPAD)
4. Smt. G. Jyothi Kiran, Standing Counsel for Municipal Corporation of Hyderabad (BY SPECIAL MESSENGER)
5. One C.C.to Sri Vedula Venkataramana,Advocate. (OPUC)
6. One spare copy.

Ksv

HIGH COURT

Ksv
Date of drafting: 01-02-2007

HCJ
&
CVNRJ

DATE: 31-01-2007

NOTE: POST ON 05-02-2007

ORDER

W.P. NO. 1602 OF 2007

DIRECTION